

(1992) 02 KAR CK 0026

In the Karnataka High Court

Case No : W.A. No"s. 1412 to 1428, 1854 to 1857, 2009 to 2010, 2044 to 2049 and 2050 to 2053 of 1991

Udayakumar

APPELLANT

Vs

Chairman, Cauvery Grameena Bank

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Regional Rural Banks Act, 1976 — Section 3 (1)

Citation : (1992) ILR (Kar) 863

Hon'ble Judges : Venkatachala, J;Vasanth Kumar, J

Bench : Division Bench

Advocate : N.S. Rajanna, K. Subba Rao, H.N. Narayan, Jayashree Bhat, Ashok B. Patil and S.G. Bhat, for the Appellant; B. Veerabhadrapa and P.D. Visawanath for M.S. Nagaraja, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, (1996) 6 AD 325 : AIR 1996 SC 2733 : (1997) 75 FLR 82 : (1996) 10 JT 175 : (1996) LabIC 2433 : (1996) 5 SCALE 678 : (1996) 9 SCC 677 : (1996) 4 SCR 190 Supp : (1996) 3 SLJ 119

Venkatachala, J.—Cauvery Grameena Bank and its Area Managers/Senior Managers have presented these Writ Appeals feeling aggrieved by the common Order dated 10th April 1991 made in Writ Petition Nos. 5445/88, 11488/87, 3581 and 3582/88, 4191 and 4192/88 and 19995 /86 by a learned single Judge of this Court (N.Y. Hanumanthappa, J.) quashing their appointments as Area Managers/Senior Managers made by promotional order dated 31.7.1986 of Cauvery Grameena Bank.

2. As common points arise in these Appeals for our consideration and Decision, we shall dispose them of by a common Judgment.

3. Undisputed antecedent facts, which are necessary for a proper consideration and disposal of these Appeals, are these:

In the year 1977, Cauvery Grameena Bank with its Head Office at Mysore, came to be established u/s 3(1) of Regional Rural Banks Act, 1976. Persons, who were appointed as Officers in that Bank from the year 1977 and whose appointments as Officers are duly confirmed according to their seniority, are those found in the "List of Officers in order of their Seniority" prepared and maintained by that Bank. Cauvery Grameena bank being one of the Regional Rural Banks working according to the guidelines issued to it by the National Bank for Agriculture and Rural Development (for short "the NABARD"), received from the latter Circular IDD.RRB.No.C.62/316 (Ge.n)-84/85 dated 31.12.1984 containing guidelines as to the creation of higher posts of Area Managers/Senior Managers in the Cauvery Grameena Bank and of filling up of those posts from amongst its Officers. Guidelines contained in that Circular for appointment of its Officers in the higher posts of Area Managers/Senior Managers were these:

"1. Area Managers/Senior Managers;

a) Source of Recruitment: 100% by promotion from amongst officers working in a bank. Promotions will be on the basis of seniority-cum-merit. If suitable Officers are not available internally, these posts could be filled by taking temporarily officers of the sponsor Banks and other banks/organizations on deputation.

b) Qualifications & Eligibility:

i) A graduate of recognised University, preference to Agricultural/Commerce/Economics Graduates.

ii) Eight years service as an officer in the bank.

iii) The above condition will be relaxable by a maximum period of two years with the specific prior approval of National Bank for Agriculture and Rural Development if suitable candidates with requisite experience are not available,

c) Reservation of posts: As may be laid down by Government of India from time to time.

The above posts of Area Managers/Senior Managers will carry a special pay of Rs.,75/- p.m. over the grade pay of the Officer concerned."

Subsequently, a Circular IDD. RRB.No.C-109/316(Gen)/85/86 dated 7-4-1986 has been received by the Cauvery Grameena Bank being one of the Regional Rural Banks, to all of which copies of such Circular were issued by the NABARD. That Circular related to "RRBs -Promotion to the posts of Senior Clerk-cum-Cashiers, Field Supervisors and Officers - Clarification". The annexure to that Circular under the head "Procedure & Agency for promotion" contains the following clarification:

"For effecting promotions, the Board may constitute one or more staff selection committees depending on the scale of the posts for which the candidates are to be interviewed, for the purpose of selecting the employees of the bank for promotion to higher posts. The committee should have at least three official directors of the board excluding Chairman, of which one should be from the National Bank or Reserve Bank and one each from Sponsor Banks and State Governments respectively. Also one member from SC/ST community should be represented in such committees as indicated in our circular letter dated 9-12-1985. The selection of the eligible candidates should be based on the performance of respective candidates in the bank. The recommendation of the Committees should thereafter have the approval of the Board before effecting promotions."

Thereafter, the Cauvery Grameena Bank, in its Circular dated 17-7-1986 issued by the Personnel Department to all its branches, having stated that it has created posts of Area Managers/Senior Managers and upgraded the posts of Managers, in the Head Office to that of Senior Managers has reiterated the guidelines as to the appointment to the posts of Area Managers/Senior Managers as contained in the NABARD's Circular dated 31-12-1984 except for an inclusion made by it under the head "Procedure" "Performance Appraisal and Interview". Later, the Chairman of the Cauvery Grameena Bank, by his letter dated 23-7-1986, has constituted a Directors Committee consisting of five Officers including himself for interviewing the eligible candidates out of the Officers of the Cauvery Grameena Bank for filling up the vacancies of newly created higher posts of Area Managers/Senior Managers. That Committee has called for interview the first 32 of the Officers of the Cauvery Grameena Bank in the aforesaid list of Officers arranged according to their seniority and interviewed 31 of them for their performance appraisal. They have awarded marks following the pro-forma appraisal form. Among the Officers so, interviewed, those who had obtained the marks of 85 as against the total marks of 150, are listed as Officers to be promoted to the cadre of Area Managers/Senior Managers and they have been subsequently promoted to the said posts by Circular No. 54 dated 31-7-1986 of the Cauvery Grameena Bank's Personnel Department signed by its Chairman. Sometime thereafter, the Chairman of the Cauvery Grameena Bank has received Circular IDD.RRB.C-78/316(Gen)/87-88 dated 1-12-1987, which was issued to all Regional Rural Banks by the NABARD, which read:

"Promotion of Managers to the post of Area/Senior Managers in Regional Rural Banks.

Please refer to our Circular letter IDD.RR.No.C-G2/316(Gen)/ 84-85 dated 31 December 1984, regarding appointments to the posts of Area Managers and Senior Managers. The matter has been examined by us in consultation with Government of India and have to advise that the posts of Area Managers/Senior Managers are promotional posts to be filled up by 100% promotion from only one source and non-selection rule of Seniority-cum-merit has to be applied. This

rule envisages promotion by seniority with due considerations to minimum merit/fitness prescribed. Fitness implies that there is nothing against an officer; no disciplinary action is pending against him and none is contemplated. The officer has neither been reprimanded nor any adverse remarks have been conveyed to him in the reasonable recent past. The promotions are said to be made on the above mentioned considerations only. In other words, if a Manager satisfies the qualifications and eligibility criteria and there is nothing adverse against him, his due promotion should not be denied to him. Similar procedure may be followed in case of promotions from Jr. Clerks to Sr. Clerks and internal promotions to Field Supervisors and Managers post. You may, therefore, review the promotions made so far to ensure that there are no supersessions unless warranted in the light of the above guidelines."

Circular IDD.RRB. No. C-107(Gen)/87/88 dated 10-2-1988 issued by the NABARD in the matter of promotion in the Regional Rural Banks with reference to the earlier Circular dated 1-12-1987 issued by it, which was received by the Chairman of the Cauvery Grameena Bank, reads thus:

"This has a reference to our Circular letter IDD.RRB.No.C-78/316(Gen)/87-88 dated 1st December 1987 on the caption subject. A number of RRBs have sought clarifications on this circular. In this connection we have to state that many instances had been brought to the notice of Government of India/National Bank wherein eligible officers/employees had been overlooked for promotion. On reviewing these cases, it was observed that officers/employees, satisfying the eligibility criteria and with consistently good performance, had been unwarrantedly overlooked for promotion although they had no adverse entries in their confidential reports. It was with the basic objective of obviating any injustice to the staff working in RRBs that the aforesaid circular was issued. It may, however, be clarified that the guidelines contained in the above circular cannot be interpreted to mean that promotions would be automatic without any screening whatsoever. The management of the RRBs are not precluded from making objective assessment of the Officer's/employee's potential from considering their suitability for promotion.

2. "A system of objective assessment of the performance of the staff should be evolved and the potential for shouldering higher responsibilities should specifically be recorded in every performance appraisal so as to ensure that only efficient staff are eligible for promotions". It should, however, be borne in mind that whenever deficiencies are observed in the working or conduct of any member of the staff, the same should be promptly pointed out to them in writing. It will be appropriate that if any adverse report is recorded on any member of the staff, the same is communicated to him with a view to affording him/her an opportunity to clarify/explain the position/improve his/her performance. Any adverse action, based on such reports such as denial of promotions to such officials, should be taken only after considering any representation that they may choose to submit to the appropriate authorities

within the stipulated time."

Even before the aforesaid Circular dated 1-12-1987 as clarified by another Circular dated 10-2-1988, adverted to earlier, of the NABARD received by the Cauvery Grameena Bank could be given effect to with respect to promotions to the posts of Area Managers/Senior Managers made under its Circular No. 54 dated 31-7-1986, the validity of that Circular had come to be challenged before this Court in Writ Petitions aforementioned filed by some of the Officers of the Cauvery Grameena Bank, some of whom were above those Officers in the seniority list of Officers of that Bank, but not promoted. The learned single Judge, who heard those Petitions, by a common order dated 10-4-1991 made in them, invalidated the aforesaid Circular No. 54 dated 31-7-1986, by which some of the Officers of the Cauvery Grameena Bank had been promoted as Area Managers/Senior Managers on his view that such promotions had not been, made according to the guidelines issued in that regard by the NABARD, and directed the Cauvery Grameena Bank to consider the cases of the petitioners in the Writ Petitions and also that of the respondents, whose promotions had been invalidated, on the basis of the seniority-cum-merit Rule, which was the guiding Rule issued by the NABARD. It is the said common Order which is now under Appeals, as stated at the out-set.

4. Points, which are required to be answered in deciding these Appeals having regard to the elaborate arguments addressed to us by learned Counsel appearing for different parties, admit of the following formulations:

(i) Did the guidelines issued by the NABARD to the Cauvery Grameena Bank in the matter of giving promotions to its Officers as Area Managers/Senior Managers, enable the latter to appoint a Directors Committee to select out of the eligible Officers by interviewing them for selecting as Area Managers/Senior Managers and promote such selectees as Area Managers/Senior Managers under the Cauvery Grameena Bank's Circular No. 54 dated 30-7-1986 which was impugned in the writ petitions;

(ii) What was it that was required of the Cauvery Grameena Bank for promoting its officers to the higher posts of Area Managers/Senior Managers under the guidelines received by them in that regard from the NABARD; and

(iii) Were the promotions of the Officers to the higher posts of Area Managers/Senior Managers made under Circular No. 54 dated 30-7-1986 impugned in the writ petitions, not liable to be interfered with and set aside.

5. We shall now proceed to consider and answer the said: Points seriatim.

Re. Point (i):

Sri S.G. Bhat, learned Counsel for the Cauvery Grameena Bank, did not contend, very rightly, that the promotions were made by the Cauvery Grameena Bank of its Officers as Area Managers/Senior Managers by the Circular impugned in the Writ Petitions, disregarding the guidelines contained in the Circulars in the matter

issued by the NABARD and independently of such Circulars. His contention based on the NABARD's Clarification Circular No. IDD.RRB.No.C-109/316 (Gen)/85-86 dated 7-4-1986, which he produced before us along with its annexure (to which we have already adverted), was that the clarification since required that "the selection of eligible candidates should be based on the performance by the respective candidates in the Bank" and a constitution of a Directors Committee for the purpose of selecting the Officers of the Bank to the higher posts, the Cauvery Grameena Bank in its Circular No. 49 dated 17-4-1986 (to which we have already adverted) issued by its Personnel Department, prescribed the procedure of selection on "performance appraisal and interview" from out of its Officers to the higher posts of Area Managers/Senior Managers and its Chairman appointed a Directors Committee for the purpose under his letter dated 23-7-1986, a copy of which was produced before us. This contention, in our view, cannot be sustained for the reasons which we shall presently state.

6. Clarification Circular dated 7-4-1986, which, according to Sri Bhat, enabled the Cauvery Grameena Bank to prescribe "performance appraisal and interview" as the basis for promotions out of its Officers to the higher posts of Area Managers/Senior Managers and appoint the Directors Committee for making such performance appraisal and interview, cannot be traced to the Clarification Circular of the NABARD., to which he invited our attention. That Clarification Circular relates to the method to be adopted by the Regional Rural Banks which included the Cauvery Grameena Bank for promotions to the posts of Senior Clerk-cum-Cashiers, Field Supervisors and Officers only. Circular No. IDD.RRB.C-64/316(Gen)84/85 dated 31-12-1984 mentioned in the clarification Circular as requiring such clarification was altogether different from Circular No. IDD.RRB,C-62/316(Gen.) 84/85 dated 31-12-1984 mentioned in the Clarification circular as requiring such clarification was altogether different from Circular No. IDD.RRB,C-62/316(Gen.)84/85 dated 31-12-1984 concerning the promotions to be made to the posts of Area Managers/Senior Managers in Regional Rural Banks. In fact, Circular No. IDD.RRB. C-62/316(Gen)/84-85, referred to in that Circular, in specific terms, required the Regional Rural Banks which included the Cauvery Grameena Bank to strictly adhere to the guidelines contained in Circular No. IDD/RRB.C-62/316(Gen)-84/85 dated 31-12-1984 issued in the matter of giving promotions to the posts of Area Managers /Senior Managers. That being the position, we are not left in doubt that the clarification Circular dated 7-4-1986 could not have formed the basis for selection of Officers of the Cauvery Grameena Bank as Area Managers/Senior Managers of that Bank, by resorting to the procedure of performance appraisal and interview and by appointment of a Directors Committee for the purpose.

7. Hence, our answer to this point is that the guidelines issued by the NABARD to the Cauvery Grameena Bank in the matter of giving promotions to its Officers as Area Managers/Senior Managers did not enable the latter to appoint a Directors Committee to select out of the eligible Officers by interviewing them for promotion as Area Managers/Senior Managers and promote such selectees as

Area Managers/Senior Managers.

8. No doubt, some of the learned Counsel appearing for the promotees sought to contend that the Cauvery Grameena Bank had acted within its powers in promoting its Officers as Area Managers/Senior Managers by prescribing its own procedure of making a selection by performance appraisal and interview by appointment of a directors Committee, in that, adoption of such a procedure could not be regarded as one not permitted under the guidelines issued in the matter by the NABARD. We find no merit in this contention since it is not for the selected candidates or promotees to say that in the matter of their selection to the posts of Area Managers/Senior Managers, the Cauvery Grameena Bank has adopted its own procedure independently of the NABARD's guidelines when such contention was not sought to be put forth before us on behalf of the Cauvery Grameena Bank.

Re. Point (ii) :

When the NABARD., by its Circular IDD.RRB.C.62/316 (Gen.) /84/85 dated 31-12-1984, to which we have adverted, issued guidelines, according to which promotions to the posts of Area Managers/ Senior Managers had to be made, source of recruitment, adverted to by it, to repeat, was this;

"Source of Recruitment: 100% by promotion from amongst officers working in a bank. Promotions will be on the basis of seniority-cum-merit. If suitable Officers are not available internally, these posts could be filled by taking temporarily officers of the Sponsor Banks and other banks/organizations on deputation."

9. From the above, recruitment to the posts of Area Managers/Senior Managers of the Cauvery Grameena Bank was from amongst Officers working in the Bank and by means of promotion only based on their seniority-cum-merit. Some of such higher posts were permitted to be filled up only when suitable Officers were not available internally. The said guidelines make it obvious that a Senior Officer should become entitled to promotion to the higher post of Area Manager/Senior Manager if he had the necessary merit of becoming suitable for the higher post. Two aspects which emanate from the above guidelines, therefore, would be that the seniormost Officer should be promoted to the higher post of Area Manager/Senior Manager if he could not be regarded as unsuitable or unfit for the higher promotional post. Circular dated 1-12-1987 of the NABARD, to which we have adverted, in explaining the Rule of promotion, calls it a non-selection Rule of seniority-cum-merit and states as to what that Rule envisages, thus:

"This rule envisages promotion by seniority with due considerations to minimum merit/fitness prescribed. Fitness implies that there is nothing against an officer; no disciplinary action is pending against him and none is contemplated. The Officer has neither been reprimanded nor any adverse remarks have been conveyed to him in the reasonable recent past. The promotions are said to be made on the above mentioned considerations only. In other words, if a Manager satisfies the qualifications and eligibility criteria and there is nothing adverse

against him, his due promotion should not be denied to him."

However, the NABARD, by its Circular dated 10-2-1988, to which we have already adverted, clarified the guidelines relating to seniority-cum-merit Rule as one not intended to mean that promotions would be automatic without any screening whatsoever and the management of the RRBs shall not be precluded from objective assessment of the Officers; or employees' potential from considering their suitability for promotion. However, need to evolve a system of objective assessment of the performance, of the staff to find its potential for shouldering higher responsibilities, is emphasised. In that regard, it is stated that adverse remarks recorded respecting the staff are to be communicated to him and it is only after obtaining clarification or explanation in the matter such reports could form the basis for denial of promotion to such staff.

10. What is stated in the said guidelines of the NABARD as regards promotion by seniority-cum-merit is in accord with what is stated by the Supreme Court in *State of Kerala and Another Vs. N.M. Thomas and Others*, which reads:

"38. ...With regard to promotion the normal principles are either merit cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority."

Hence, in the matter of appointment of Officers of the Cauvery Grameena Bank to the higher posts of Area Managers/Senior Managers on the basis of seniority-cum-merit, if due regard was given to the guidelines issued in the matter by the NABARD, it was incumbent on the Board of Directors of the Cauvery Grameena Bank to examine the suitability of the seniormost Officer for being promoted to the higher post of Area Manager/Senior Manager with reference to the finalised confidential records of the officer concerned of a few years of reasonably recent past as to his suitability or fitness to the higher post and not to deny him that post if he could have been considered to be suitable or fit for being promoted to the higher post on the basis of such confidential records. When there are more than one higher promotional post, inevitably seniormost Officer's case has to be considered for each of such posts and only in the event of his unsuitability for such higher post, the question of considering the case of the Officer immediately junior to him does arise.

Re. Point (iii) :

The contention advanced by Sri Bhat on behalf of the Cauvery Grameena Bank for non-interference with the promotions of the Officers of the Cauvery Grameena Bank as its Area Managers/Senior Managers under the Circular impugned in the Writ Petitions, was that even if the Officers promoted as Area Managers/Senior Managers under the impugned Circular were to be promoted not on the basis of their performance appraisal and interview, but only on the basis of their seniority-cum-merit, most of them would have been promoted and hence the Circular, by which they were promoted on the basis of their

performance appraisal and interview should not be interfered with. On behalf of some of selectees, arguments were advanced in support of such contention. We find it rather difficult to accede to the said contention.

11. It is not disputed that the cases of some of the petitioners, who were above in the senior list of officers as compared with the persons who have been promoted as Area Managers/Senior Managers under the Circular impugned in the Writ Petitions, were not considered before the selection was made, in that, the selection made was based on the total number of marks obtained by the selectees by reason of their performance appraisal and interview. Then, the basis for promoting the Officers by the impugned Circular as Area Managers/Senior Managers, is made on the Directors Committee's recommendation and not on the basis of the decision of the Board of Directors, which alone would be competent to decide on the question of promotion of an Officer on the basis of seniority-cum-merit. It has to be noted that though law may permit a promoting authority to receive assistance in the matter of Officers to be promoted, from a Committee or any individual, the ultimate decision in that regard must lie with the promoting Authority which is required to apply its mind while making promotions. It is this legal position which has compelled us not to accede to the contention that the Circular of the Cauvery Grameena Bank issued only by its Chairman, which was impugned in the Writ Petitions, could not have been interfered with.

12. A learned Counsel appearing for the promotees contended that the Writ petitioners, by attending the interview before the Directors Committee, must be regarded as having waived their right to question the select list prepared by that Committee. In a case as the one on hand, we find it rather difficult to think that the petitioners, who have questioned the promotion list, when attended the interview, for which they were called, could have applied their mind to the legal aspects of the matter and deliberately attended the interview by waiving their rights to question the list of selected candidates to be prepared by such Committee in the event that that list was not prepared in accordance with law. No doubt, there may be cases where waiver may be held against a party seeking relief invoking the Writ jurisdiction of this Court, but the cases on hand, having regard to their peculiar facts, to which we have adverted, cannot be regarded as those where the petitioners, who have approached this Court invoking the extraordinary remedy of Writ jurisdiction, could be denied the same holding that their conduct was such which disentitles them to seek such relief.

13. Another contention raised by one of the learned Counsel appearing for the promotees was that some of the Writ petitioners not having approached this Court immediately and there being a delay in the matter of rendering a Decision on the validity of the impugned Circular relating to promotions, the Writ Petitions themselves should have been dismissed. It is rather difficult to accede to this contention, which, in our view, is rather strange inasmuch as some of the petitioners had approached this Court immediately after the promotions were

made. Then, the delay on the part of this Court in deciding the Writ Petitions, in our view, if could be the reason as sought on behalf of the selectees for not interfering with the Circular impugned in the Writ Petitions, every order whatever may be its illegality has to be sustained by this Court, in that, some sort of delay is bound to be there in the disposal of the Writ Petition. Hence, the contention of the learned Counsel that the Writ Petitions should have been dismissed for the delay occurred in some of the Writ petitioners approaching this Court and for the delay of this Court in rendering its decision, cannot be sustained.

14. Our answers to the above points do not enable us to interfere with the common order under Appeals.

15. In the result, we dismiss these Appeals with a direction to the Cauvery Grameena Bank to consider afresh the cases of its Officers for promotion to the existing higher posts of Area Managers/Senior Managers on the basis of the Rule of seniority-cum-merit giving due regard to their suitability for the higher posts according to their reasonably recent past finalised annual confidential records pertaining to their work performance and conduct, and appoint in the higher posts such of those who may be found fit for such appointments by promotion. Appointments of Officers of the Cauvery Grameena Bank to its existing 15 higher posts of Area Managers/Senior Managers by promotion shall be done in four months from today.